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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 JOHN WITHEROW, et al., )

10 Plaintiffs, )

11 vs. )

12 JACKIE CRAWFORD, CHARLES )  
13 FOURNIER, MICHAEL HOFF and STEVEN )  
SUWE, )

14 Defendants. )  
15 \_\_\_\_\_ )

3:01-CV-00404-LRH-VPC

ORDER

16 Presently before this court is Plaintiffs' Supplemental Opposition to Defendants' Motion  
17 for Reconsideration (#235). This motion was timely filed but came to the court's attention after  
18 judgment was entered in Defendants' favor as to all of Plaintiffs' remaining claims. However, to  
19 ensure that Plaintiffs' arguments are addressed, this court will discuss why judgment in favor of  
20 Defendants was proper even in light of the arguments advanced in the present motion.

21 **FACTS AND PROCEDURAL HISTORY**

22 This is an action brought under 42 U.S.C. § 1983 by John Witherow, an inmate  
23 imprisoned at the Nevada Department of Correction's Lovelock State Prison. Additional  
24 Plaintiffs are Julie Sikorski and Barbara Keenan, who corresponded by mail with Plaintiff  
25 Witherow while he was in custody of the Nevada Department of Corrections. Plaintiffs allege  
26 that Defendants Charles Fournier and Michael Hoff, who are correctional officers with the  
27 Nevada Department of Corrections, opened and read mail sent to or by Plaintiffs without  
28 notifying them of this screening or granting an opportunity to appeal the screening.

On December 28, 2006, this court adopted and accepted the Report and Recommendation of U.S. Magistrate Valerie P. Cooke (#197), recommending granting in part and denying in part Defendants' Motion for Summary Judgment (#167). This order disposed of a number of Plaintiffs' claims but left standing Counts 2, 4, and 5 -134 of the Amended Complaint (#89).

### DISCUSSION

Plaintiffs argue that summary judgment in favor of Defendants as to Plaintiffs' remaining claims is improper because issues still remain for trial. Plaintiffs advance two arguments for this proposition. First, Plaintiffs argue that Defendants have violated prison regulation AR 750 by reading Plaintiffs' mail. This argument does not demonstrate that any genuine issue remains for trial, however, because the Magistrate's Report and Recommendation, which this court adopted (#206), concluded that Plaintiffs were not denied a liberty interest protected by the Due Process Clause even if Defendants violated AR 750. (#197 at 18).

Second, Plaintiffs argue that Defendants violated Plaintiffs' constitutional rights by opening their mail and reading private letters without judicial authorization based upon probable cause. Plaintiffs then cite to three cases—*Ex Parte Jackson*, 96 U.S. 727 (1877); *United States v. Van Leeuwen*, 397 U.S. 249 (1970); and *United States v. Hernandez*, 313 F.3d 1206 (9th Cir. 2002)—that address Fourth Amendment protections for persons sending mail through the United States Postal Service. Plaintiffs again fail to present a genuine issue for trial because the Magistrate's Report and Recommendation, which this court adopted (#206), rejected Plaintiffs' Fourth Amendment claims at summary judgment. (#197 at 25).

The court's order (#236) granting summary judgment in favor of Defendants and against Plaintiffs is reconfirmed.

IT IS SO ORDERED.

DATED this 30<sup>th</sup> day of August, 2007.




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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE